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HOUSE RESEARCH ORGANIZATION

daily floor report

Saturday, May 23, 2015
84th Legislature, Number 77
The House convenes at 10:30 a.m.
Part Two

Eighteen bills are on the daily calendar for second-reading consideration today. The bills analyzed in Part Two of today's *Daily Floor Report* are listed on the following page.



Alma Allen
Chairman
84(R) - 77

HOUSE RESEARCH ORGANIZATION

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Saturday, May 23, 2015

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Part 2

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SUBJECT: Credits against maximum cumulative period to restore competency

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Herrero, Moody, Leach, Shaheen, Simpson
0 nays
2 absent — Canales, Hunter

SENATE VOTE: On final passage, April 30 — 31-0, on local and uncontested calendar

WITNESSES: For — (*Registered, but did not testify*: Seth Mitchell, Bexar County Commissioners Court; Patricia Cummings, Texas Criminal Defense Lawyers Association)
Against — None

BACKGROUND: Code of Criminal Procedure, art. 46B.009 requires a court to credit certain periods of confinement in a mental health facility, residential care facility, or jail to the term of a person’s sentence who has been convicted of a criminal offense.

Code of Criminal Procedure, art. 46B.0095 states that defendants cannot under provisions of the law that cover incompetency to stand trial for a crime be committed to a mental hospital or other facility or ordered to participate in outpatient treatment or both for a cumulative period that exceeds the maximum jail term carried by the offense, except under certain circumstances.

The 82nd Legislature enacted competing statutes in 2011 through HB 2725 by Hartnett and HB 748 by Menéndez. Code of Criminal Procedure, art. 46B.0095(d) enacted by HB 748 *allows* a court to provide credit to a defendant for certain periods of confinement, in addition to any good conduct time the defendant had been granted. Code of Criminal Procedure, art. 46B.0095(d) enacted by HB 2725 *requires* the defendant to receive credit for the period and does not include any provision

regarding good conduct time.

Similar competing provisions were added to Code of Criminal Procedure, art. 46B.10(2). If a court orders that a defendant charged with a misdemeanor punishable by confinement be committed to a hospital or other inpatient or residential facility, participate in an outpatient treatment program, or be subjected to both inpatient and outpatient treatment, and the defendant is not tried before the expiration of the maximum cumulative period, on the motion of a prosecutor under the provision enacted by HB 748, the court is *required* to dismiss the charge. On the motion of the defendant's attorney under the provision enacted by HB 2725, the court is *allowed* to dismiss the charge under certain circumstances.

DIGEST:

SB 1326 would repeal Code of Criminal Procedure, art. 46B.0095(d) enacted by HB 748 in 2011, which allows courts to credit to defendants time spent confined in a correctional facility before an initial order of commitment or an initial order for outpatient treatment. It also would repeal the provision of the bill that allows courts to credit good conduct time to these defendants.

This repeal would leave in statute as art. 46B.0095(d) provisions enacted by HB 2725 in 2011, which requires courts to credit defendants for time spent in a correctional facility before an initial order or commitment or outpatient treatment. SB 1326 would institute a new provision allowing courts to credit defendants for good conduct time earned during their confinement.

The bill also would reenact art. 46B.010, which requires misdemeanor charges against a defendant in these cases to be dismissed under certain circumstances, including upon a motion by the prosecutor. The bill would reenact the section by eliminating the provision enacted as part of HB 748, and leaving the provision enacted by HB 2725.

Under the remaining provision, if a court ordered a defendant charged with a misdemeanor to be committed to a mental hospital or other facility, to participate in outpatient treatment, or both, and the defendant was not tried before the maximum period allowed for the restoration of

competency, the court could dismiss the charge upon a motion by the defendant's attorney, if the court found that the defendant had not been tried before the expiration of the maximum period of restoration.

The bill would take effect September 1, 2015, and would apply only to a defendant to which any proceeding under Art. 46B was conducted on or after the effective date.

**SUPPORTERS
SAY:**

SB 1326 would reduce confusion among courts as to what the current law is regarding the use of good conduct time credit toward the maximum cumulative period allowed for restoration of a defendant's competency to stand trial.

Under current law, a court is required to commit a defendant determined incompetent to stand trial to a mental health facility or a residential care facility for further examination and treatment to restore the defendant's competency to stand trial. However, these defendants do not receive any time credits toward this time committed to restoration. This bill would grant defendants good conduct time credits toward the maximum cumulative period.

Granting credit for time spent in a correctional facility before being committed to a mental hospital or other treatment facility toward the maximum cumulative period would align with current law that allows credit to be earned during the commitment for competency restoration toward a subsequent sentence. This bill would merely be conforming to a similar practice already in statute.

This bill also would clear up conflicting language between two sections of the same article. The 82nd Legislature enacted bills that created two alternatives in the code, but did not provide the courts with any guidance about the circumstances to which each provision would apply. This bill would repeal one section and make it discretionary for a judge to dismiss a misdemeanor case on the motion of the defendant's attorney after a finding that a defendant was not tried before the expiration of the maximum cumulative period of restoration. The bill still would require a judge to dismiss such a misdemeanor case on the motion of the prosecutor.

OPPONENTS No apparent opposition.
SAY:

SUBJECT: Changing requirements for voting, notice, and meetings for POAs

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 6 ayes — Oliveira, Simmons, Collier, Rinaldi, Romero, Villalba

0 nays

1 absent — Fletcher

SENATE VOTE: On final passage, May 6 — 27-4 (Campbell, Creighton, L. Taylor, V. Taylor)

WITNESSES: *(On House companion bill, HB 2797)*

For — Judd Austin and Pam Bailey, Texas Community Association Advocates; *(Registered, but did not testify: Julián Muñoz Villarreal and David M. Smith, Texas Neighborhoods Together)*

Against — Bill Davis; David Kahne

BACKGROUND: In 2011, the 82nd Legislature made various changes to the law governing property owners' associations (POAs) when it enacted HB 1228 by Dutton, HB 1821 by R. Anderson, and HB 2761 by Garza.

Property Code, sec. 51.002 establishes the procedure for a sale of property under a power of sale contained in a deed of trust or other contract lien. Texas Rule of Civil Procedure 736 provides the procedure for obtaining a court order, when required, to allow foreclosure of a lien containing a power of sale in the dedicatory instrument, including a lien securing a POA's assessment.

DIGEST: SB 1168 would change provisions of current law governing property owners' associations (POAs) related to foreclosures, meetings, notice of violations, and voting procedures.

Foreclosure. The bill would specify that a POA could send notice related to foreclosure actions to any lienholder of record on the property, not only

subordinate lienholders as required by current law. POAs that had a dedicatory instrument granting a right of foreclosure would be considered to have any power of sale required to use the expedited foreclosure process allowed under the Texas Rules of Civil Procedure. Under this process, a POA must obtain a court order in an application for an expedited foreclosure. A POA eligible to pursue an expedited foreclosure could elect to seek a judicial foreclosure instead.

Board meetings. A POA board meeting could be held electronically or by phone if every board member could hear and be heard by every other board member, owners were allowed to listen, and the notice of the meeting provided relevant instructions for the owners.

The board could take actions outside of a meeting if all board members was given reasonable time to vote and express their opinions to other board members. Under current law, the board cannot consider or vote on certain matters outside of an open meeting requiring notice. The bill would add to those matters.

The bill also would amend voting procedures for POA members, including procedures related to vote recounts.

Notice of violation and curing. Written notice required by current law before a POA can take certain enforcement actions against an owner for a violation could be sent by a POA to an owner by verified, rather than certified, mail. “Verified mail” would mean any method of mailing for which evidence of mailing was provided by the U.S. Postal Service or a common carrier.

The notice would have to specify a reasonable date by which the owner would be required to cure the violation. If the owner cured the violation before the deadline, no fine could be assessed by the POA.

Curable violations would include parking violations or an ongoing noise violation, such as a barking dog. A violation would be un-curable if it occurred but was not a continuous action or a condition capable of being remedied by affirmative action. Un-curable violations would include shooting fireworks or property damage.

The bill would take effect September 1, 2015.

**SUPPORTERS
SAY:**

SB 1168 would give clarity to property owners' associations (POAs) that were experiencing operational and technical issues caused by ambiguities and contradictions in current law created by previous legislation. It would provide POAs with guidance and flexibility in day-to-day operations by allowing meetings to be held via telephone or other electronic means, authorizing the use of secret ballots, and allowing some routine actions to be decided outside of a meeting.

The bill would align the Property Code with Texas Rule of Civil Procedure 736 on expedited foreclosure. It would not give foreclosure authority to a POA that did not already have it but would make clear that POAs could pursue expedited foreclosure under rule 736 if its dedicatory instrument provided for it. The bill would specify that POAs still could pursue judicial foreclosure.

SB 1168 would authorize POAs to notify all lienholders, not just subordinate lienholders, of an owner's delinquent payments to allow the lienholders an opportunity to pay the debts to protect their interests before the POA foreclosed on the property. This would be helpful because sometimes it is difficult to determine which entities have subordinate liens due to frequent lien transfers.

The bill would allow verified mail, rather than certified mail, to satisfy certain notice requirements, which would be less expensive for the sender and more effective because many people do not pick up certified mail. This would not harm a property owner's right to notice because evidence still would be required to show the mail was sent.

**OPPONENTS
SAY:**

SB 1168 could grant a new power of sale to POAs that did not have one previously. Many POAs have the right of foreclosure contained in their dedicatory instruments, but it is different from a power of sale.

For the two main categories of foreclosure, judicial and non-judicial, judicial foreclosure is available if a POA's dedicatory instrument contains the right to foreclosure, while a non-judicial foreclosure is available only

if the instrument contains a power of sale. The bill could create a power of sale for a POA with a right of foreclosure and allow POAs to circumvent the judicial system.

The bill would authorize a POA to send notice of an owner's delinquent payments to superior lienholders before it foreclosed on the property. The lien of a superior lienholder is not threatened by the foreclosure of a subordinate lienholder. This would allow a POA to involve a lienholder, such as a bank that provided a mortgage, to pressure the owner into paying whatever assessments the POA believed it was owed.

SB 1168 would allow POAs to send notice to an owner via verified mail when the POA sought certain enforcement actions against a homeowner. Removing the requirement of certified mail could weaken the owner's right to notice.

NOTES:

The House companion bill, HB 2797 by Villalba, was sent to the Local and Consent Calendars Committee on April 28.

SUBJECT: Expanding disclosure requirements for certain insurance companies

COMMITTEE: Insurance — favorable, without amendment

VOTE: 7 ayes — Frullo, Muñoz, G. Bonnen, Guerra, Meyer, Paul, Workman

0 nays

2 absent — Sheets, Vo

SENATE VOTE: On final passage, April 7 — 28-3 (Burton, Hall, Huffines)

WITNESSES: No public hearing

BACKGROUND: SB 736, enacted by the 83rd Legislature in 2013, added Insurance Code ch. 544, subch. L to prohibit an insurer from using a different underwriting guideline or charging a different rate for consumers solely because they make inquiries regarding their policies. Sec. 544.552 states that the prohibition applies only to a standard fire, homeowners, or farm and ranch owners insurance policy.

DIGEST: SB 188 would specify that—for the purpose of prohibiting an insurer from using a different underwriting guideline or charging a different rate for consumers who made inquiries regarding their policies—standard fire, homeowners, or farm and ranch owners insurance policies would include policies written by:

- a farm mutual insurance company;
- a county mutual insurance company;
- a Lloyd’s plan; and
- a reciprocal or inter-insurance exchange.

The bill would take effect September 1, 2015, and would apply only to an underwriting decision or a rate for an insurance policy delivered, issued, or renewed, on or after that date.

SUPPORTERS SB 188 would expand existing provisions that protect homeowners by

SAY: preventing insurance companies from raising their rates or canceling their policies if policyholders ask questions about their coverage. Homeowners should feel comfortable contacting their insurance carriers with questions and concerns without fearing that they could lose their coverage or see their rates increase.

The bill would expand the protections put in place by SB 736 to include policies written by a farm mutual insurance company, a county mutual insurance company, a Lloyd's plan, and a reciprocal or inter-insurance exchange, which account for more than half the insurance market in Texas.

OPPONENTS SAY: SB 188 would create an unnecessary layer of regulation aimed at preventing a practice that is uncommon. The insurance industry already is heavily regulated, and insurers would be unlikely to cancel a policy or raise a rate merely because a policyholder inquired about a policy.

SUBJECT: Amending practices of Texas Appraiser Licensing and Certification Board

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 6 ayes — Smith, Gutierrez, Goldman, Guillen, Kuempel, D. Miller

0 nays

3 absent — Geren, Miles, S. Thompson

SENATE VOTE: On final passage, April 21 — 28-2 (Hall, Huffines)

WITNESSES: *(On House companion bill, HB 2850)*

For — Joseph Woller, Foundation Appraisers Coalition of Texas;
(Registered, but did not testify: Amy Ables and Glenn Garoon,
Foundation Appraisers Coalition of Texas; Chris Farr)

Against — *(Registered, but did not testify: Kelley Shannon, Freedom of Information Foundation of Texas)*

On — *(Registered, but did not testify: Douglas Oldmixon; Texas Appraiser Licensing and Certification Board)*

BACKGROUND: Occupations Code, ch. 1103, the Texas Appraiser Licensing and Certification Act, establishes the Texas Appraiser Licensing and Certification Board as an independent subdivision of the Texas Real Estate Commission.

By rule, the board regulates real estate appraiser certificates and licenses, continuing education, and professional conduct.

DIGEST: SB 1007 would make changes to the structure and practices of the Texas Appraiser Licensing and Certification Board. The bill would adjust the board's functions, including changing board terms, advisory committee composition, real estate appraiser continuing education requirements, and various aspects of how complaints and disciplinary actions against real

estate appraisers would be handled. The bill also would place the board under Sunset review in 2019.

Texas Appraiser Licensing and Certification Board members. The bill would extend Texas Appraiser Licensing and Certification Board member appointment terms from two-year terms to six-year terms. The executive committee would be the governor-appointed presiding officer, assistant presiding officer, and secretary. New members of the board would be required to complete an initial training program before participating in certain board activities.

The bill would provide that if the commissioner of the Texas Appraiser Licensing and Certification Board had knowledge that a potential ground for removal of an appointed board member existed, the commissioner would notify the presiding officer so that person could notify the governor and attorney general. If the potential ground for removal involved the presiding officer, the commissioner would have to notify next highest ranking board member and that person would notify the governor and attorney general.

The bill would increase the frequency with which the board would be required to send a roster of persons certified or licensed under the Texas Appraiser Licensing and Certification Act to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council from at least annually to at least weekly.

Real estate appraiser education. The bill would allow board members and staff to give presentations to real estate license holders and award continuing education credit for such presentations. Board members and staff could not be compensated for the presentations.

In addition to continuing education, the bill would include requirements for approval of continuing education providers, courses and instructors in the board's rulemaking authority.

Appraisal Management Company Advisory Committee. The bill would expand the membership of the Appraisal Management Company Advisory Committee, which provides recommendations to the board

regarding regulation of appraisal management companies, from three people to five people. The bill would increase the number of appointees named by the governor from two to four, including an additional member designated as a controlling person of a registered appraisal management company, and an additional public member with recognized business ability. The governor would be required to appoint the new members within 60 days of the effective date of the bill.

Real estate appraiser certificate or license application. The bill would replace the current eligibility requirements for a real estate appraisal license with an application process for a real estate appraiser certificate or license or for renewal of a certificate or license.

Applicant criminal history information. An applicant would have to disclose whether the applicant had been convicted of a felony or entered a guilty plea, regardless of whether a court order granted community supervision. The bill would allow the board, by rule, to require an applicant to submit a complete and legible set of fingerprints on a form prescribed by the board to either the board or to the Department of Public Safety (DPS) for the purpose of obtaining criminal history record information from DPS or the Federal Bureau of Investigation.

The bill would provide instruction for conducting a criminal history check and would allow the board to enter into an agreement with DPS or other federally authorized entity to administer a required criminal history check. DPS or other federally authorized entity would be allowed to collect from each applicant the costs incurred in conducting the criminal history check.

Experience required for real estate appraiser examination. The bill would require an applicant for the examination to fulfill the applicable experience requirement for a certificate or license before taking the examination.

Disciplinary proceedings. The bill would make various changes to how complaints against real estate appraisals would be handled.

Statute of limitation on complaints. The bill would establish a four-year statute of limitations for a complaint investigation against a real estate

appraiser. If the board determined that an allegation or formal complaint was inappropriate or without merit, the board or the commissioner of the board would be required to dismiss the complaint and not take further action.

Peer investigative committee. The bill would change the composition of the peer investigative committee, which reviews and determines the facts of a complaint and prepares a report regarding the complaint to the board, from three certified or licensed appraisers to two or more.

Under the bill, a real estate appraiser who was the subject of the complaint could participate in a voluntary discussion of the facts and circumstances of the alleged violation.

Settlement negotiation. Under current law, the board may negotiate a settlement and enter into a consent order with an appraiser who was the subject of a complaint. The bill would disqualify a board member who participated in negotiating a consent order from participating in the adjudication of a contested case that resulted from the negotiation.

An appraiser could be disciplined, rather than prosecuted, for failure to comply with a consent agreement.

Confidentiality of investigation material. The bill would allow the board's investigative files to remain confidential during an ongoing investigation, but would make them subject to the Public Information Act once the investigation was complete and any final action was taken.

Failure to appear at a contested case hearing. The bill would allow an administrative law judge to award reasonable costs to the board if the real estate appraiser who was the subject of a complaint failed to appear for a hearing to contest the alleged violation.

Administrative penalty. The bill would dedicate administrative penalties imposed by the board for violations to a restricted fund for educational programs or studies.

Waiting period for license. The bill would expand the two-year waiting

period currently applied to a reapplication after license revocation or a license surrender to also apply to a denial of a license after the opportunity for a contested case hearing.

Cease and desist order. The bill would grant the board cease-and-desist authority over a person engaged in unlicensed activity. The board could issue this order after it provided notice and an opportunity for a hearing.

Other provisions. The bill would include an appraiser trainee as an occupation for which the board was authorized to adopt certain rules regarding professional conduct.

Under the bill, certified real estate appraisers would be allowed to conduct reviews of appraisal reports on Texas properties without Texas credentials as long as no opinion of value was offered.

Sunset review. The bill would add the Texas Appraiser Licensing and Certification Board to the Sunset review schedule in 2019.

Repealers. The bill would repeal the following sections of the Occupations Code:

- Sec. 1103.005, providing that a person is not required to be licensed as a real estate broker or salesperson under Chapter 1101 to appraise real property in this state if the person is certified or licensed, approved as an appraiser trainee, or certified or licensed as a real estate appraiser by another state;
- Sec. 1103.2015, requiring an applicant for a license or certificate to provide the board with a current mailing address, telephone number, and e-mail address, if available;
- Sec. 1103.457, allowing the appraiser or appraiser trainee who is the subject of a complaint an opportunity to appear before the board or an agent of the board for a voluntary, informal discussion of the facts and circumstances of the alleged violation.

The bill would take effect September 1, 2015.

SUPPORTERS

SB 1007 would make necessary changes to the structure and functions of

SAY: the Texas Appraiser Licensing and Certification Board to ensure it has the tools to comply with federal oversight requirements.

The bill would allow the board to implement fingerprint-based criminal history checks as part of the application for a real estate appraiser license if it becomes a federal requirement. While the background check would be federally required, the board would still have discretion on the determination of an application as long as the applicant did not have a felony within the past five years.

A background check is a necessary measure to ensure the safety of homeowners, since real estate appraisers must enter properties to conduct appraisals. Homeowners should feel secure knowing that the appraisers are credible and trustworthy.

**OPPONENTS
SAY:**

SB 1007 would make changes to the Texas Appraiser Licensing and Certification Act that could violate a person's individual liberty and would be overly punitive. The bill would require background checks and felony disclosure when applying for a real estate appraiser license. Background checks could result in qualified people being refused a license based on a person's history that may not have any relevance to the profession. After a person has paid the person's debt to society, that individual should not have to endure a lifelong punishment by a criminal history record that could prevent the individual from obtaining a job in the person's chosen profession.

The bill also would grant the Texas Appraiser Licensing and Certification Board cease-and-desist authority. Issuing a cease-and-desist order for a violation under this profession could be too punitive.

NOTES:

The House companion bill, HB 2850 by Kuempel, was considered in a public hearing of the House Committee on Licensing and Administrative Procedures on May 4 and left pending.

- SUBJECT:** State agency policies for employees to work from their residences
- COMMITTEE:** State Affairs — favorable, without amendment
- VOTE:** 7 ayes — Cook, Farney, Farrar, Geren, Huberty, Kuempel, Minjarez
2 nays — Harless, Smithee
4 absent — Giddings, Craddick, Oliveira, Sylvester Turner
- SENATE VOTE:** On final passage, April 22 — 22-8 (Creighton, Fraser, Hall, Huffman, Kolkhorst, Nelson, Nichols, Perry)
- WITNESSES:** (*On House companion bill, HB 1839*)
For — Chris Frandsen, League of Women Voters; (*Registered, but did not testify*: Gerardo Castillo, Greater Austin Hispanic Chamber of Commerce; Heidi Gerbracht, Real Estate Council of Austin; Dana Harris, Austin Chamber of Commerce; Ray Hymel, Texas Public Employees Association; Micah Rodriguez, Dell; Ruben Cantu; Perry Fowler; and Heather Ross)
Against — None
On — (*Registered, but did not testify*: Deborah Hujar, Department of Information Resources)
- BACKGROUND:** Government Code, sec. 658.006 allows normal working hours for state agency employees to be staggered for traffic regulation or public safety. Sec. 658.010 allows state agency employees who have received prior written authorization from their agency head to perform work elsewhere than the regular or assigned temporary place of employment. That section states that an employee’s personal residence may not be considered the employee’s regular or assigned temporary place of employment without prior written authorization from the agency head.
- DIGEST:** SB 1032 would allow a state agency head to adopt a policy authorizing a supervisor to permit an employee to work from an alternative work site,

including the employee's residence, as the employee's regular or assigned temporary workplace.

An agency policy would have to identify factors for consideration in evaluating whether a position would be suitable for an alternative work site, including whether:

- the position required on-site resources;
- the provision of in-person service was essential to the position; and
- in-person interaction was essential to the position.

An employee who worked from an alternative site would be required to enter into an agreement that established the employee's responsibilities and requirements for communicating with and reporting to the agency. The agency policy would have to provide for revocation of permission if the position was no longer suitable for an alternative work site or the employee violated the agreement.

An employee working from an alternative site could, with a supervisor's approval, complete all or part of the employee's working hours, including compensatory time and overtime, at times other than the regular agency working hours of 8 a.m. to 5 p.m. Such an employee would be subject to existing agency compensatory and overtime policies.

The Texas Department of Information Resources would be required to compile and submit a report to the Legislature, which would have to include:

- a list of agencies that had adopted a policy;
- a description of the policies' requirements;
- an estimate of the number of employees who worked from an alternative work site;
- an assessment of the productivity, efficiency, and value to taxpayers of employees working from an alternative work site;
- an assessment regarding the policies' effect on congestion; and
- any other relevant information.

The Texas A&M Transportation Institute would be allowed to assist in creating the report, which would be due by November 1 of each even-numbered year.

This bill would take effect September 1, 2015.

**SUPPORTERS
SAY:**

SB 1032 would allow state agencies to implement policies allowing certain employees to work from home, or telecommute, to reduce costs, enhance productivity, and improve traffic congestion in downtown Austin where many state agencies are located. Tens of thousands of state employees add to rush hour traffic and air quality issues in the Austin metro area. Lowering the number of commuters could save money by reducing the need for office and garage space.

Current law requires state employees to gain approval from agency heads to work from home. The bill would allow an agency to have a policy, rather than handling requests on a case-by-case basis. Many private businesses allow employees to work from home and consider it helpful for attracting and retaining employees. The bill would allow telecommuting only for appropriate positions and would include safeguards to ensure employees fulfilled their responsibilities. The Department of Information Resources (DIR) would assess the productivity, efficiency, and value of the policies to taxpayers and report the findings biennially to the Legislature.

In 2014, DIR surveyed state agency and higher education human resources and information technology leaders on telework. The survey found that, on average, one of five agency and higher education employees worked from home, and most of those did so one day or less per week. Lack of executive and high-level support was cited as the most common reason not to have a telework policy. The bill would allow more agencies to develop such policies.

**OPPONENTS
SAY:**

SB 1032, by allowing state employees to work from home, could lead to reductions in employee productivity, as well as to additional costs to taxpayers.

Allowing employees to work from an alternative site would make it

difficult for supervisors to oversee employees and to verify that they were actually working during the hours claimed. As a result, taxpayers could end up paying more and getting less from their state government.

NOTES: The House companion bill, HB 1839 by Israel, was reported favorably by the House State Affairs Committee on April 9 and sent to the House Calendars Committee on April 20.

SUBJECT: Allowing equivalent education courses for intoxication, drug offenses

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Herrero, Moody, Leach, Shaheen, Simpson

0 nays

2 absent — Canales, Hunter

SENATE VOTE: On final passage, April 27 — 30-0

WITNESSES: For — (*Registered, but did not testify*: Sarah Pahl, Texas Criminal Justice Coalition)

Against — None

BACKGROUND: Under Code of Criminal Procedure 42.12, sec 13(h), judges must require that defendants placed on probation for certain intoxication offenses attend and successfully complete a state-approved educational program designed to rehabilitate persons who have driven while intoxicated. This requirement applies to persons put on probation for driving while intoxicated, driving while intoxicated with a child passenger, flying while intoxicated, boating while intoxicated, assembling or operating an amusement ride while intoxicated, intoxication assault, and intoxication manslaughter. Under 42.12, sec. 13(j), there is a similar requirement for judges putting offenders on probation under provisions that allow enhanced penalties for some intoxication.

Under Transportation Code sec. 521.372, a person's driver's license is automatically suspended upon final conviction for an offense under the Texas Controlled Substances Act (Health and Safety Code, ch. 481), a drug offense, or a felony under ch. 481 that is not a drug offense. Under sec. 521.374, individuals who have had their licenses suspended may attend a state-approved education program designed to educate persons on the dangers of drug abuse. The period of a license suspension, generally 180 days, can continue until the individual successfully completes the

education program.

DIGEST:

SB 1070 would allow certain probationers convicted of intoxication offenses to receive a waiver of a requirement to complete an education course if they completed equivalent education while confined to a residential treatment facility. The bill would allow a similar waiver for some individuals who had their driver's licenses suspended due to drug-related charges and attended an education course while in treatment.

Judges would be required to waive the requirement that persons put on probation for driving while intoxicated and certain other intoxication offenses attend and successfully complete a state-approved education program if the probationer successfully completed equivalent education while confined in a residential treatment facility. The Department of State Health Services would be required to approve the equivalent education provided at substance abuse treatment facilities. A judge would be required to make a finding that the defendant had completed the education.

SB 1070 would establish a similar provision for those who had their driver's licenses suspended under Transportation Code, sec. 521.372 for drug-related convictions. The bill would allow education programs completed by a person while a resident of a drug abuse or chemical dependency facility to meet the current requirement of completing a state-approved education course. The Department of State Health Services would approve the equivalent education provided at residential facilities.

Under both circumstances, the bill would define a facility for the treatment of substance abuse, drug abuse, or chemical dependency to include certain substance abuse treatment or punishment facilities operated by the Texas Department of Criminal Justice, community corrections facilities, and chemical dependency treatment facilities licensed under the Health and Safety Code.

The bill would update references in the code to the state entities responsible for implementing these requirements to reflect the abolition of the Texas Commission on Alcohol and Drug Abuse.

The bill would take effect September 1, 2015, and would apply to persons placed on probation on or after that date.

**SUPPORTERS
SAY:**

SB 1070 would keep certain offenders from having to attend duplicative courses by expanding the types of education programs that could fulfill requirements to attend alcohol or drug education programs. Currently, certain offenders with alcohol- or drug-related charges are required to attend state-approved education programs. However, some of these individuals who are in residential treatment facilities complete similar programs that are more extensive than programs offered outside these facilities. Programs in residential treatment facilities can range from about 80 hours to 300 hours, while those taken outside of the facilities may range from about 25 hours to 50 hours. In these cases, requiring offenders to attend another course after leaving a residential facility would be redundant and unnecessary. Requiring a duplicative course places a financial burden on some defendants and is counterproductive for those who must take time off from work or school to attend the program.

By allowing equivalent, state-approved courses taken in residential treatment centers to fulfill the current requirements, SB 1070 would meet the intent of current law that offenders receive education and treatment. Enough people need such services to support offering education programs outside of and within residential treatment facilities. In some cases, the failure of an offender to attend classes outside of a facility can contribute to his or her placement in a treatment facility, so SB 1070 would fill a gap for these offenders, not draw them away from outside courses.

The bill would require judges to make a finding that the defendant had completed the education requirement, which would streamline the process of the waiver and not require a motion from the probationers.

**OPPONENTS
SAY:**

No apparent opposition.

SUBJECT: Amending the organization of a grand jury

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Herrero, Moody, Leach, Shaheen, Simpson

0 nays

2 absent — Canales, Hunter

SENATE VOTE: On final passage, March 23 — 31-0

WITNESSES: (*On House companion bill, HB 282*)

For — Kathy Swilley, Johnny Mata, and Kathy Self, Greater Houston Coalition For Justice; Patsy Pate, Greater Houston Coalition for Justice/Victims' Rights Committee; Collette Flanagan and Kristi Lara, Mothers Against Police Brutality; Patricia Cummings, Texas Criminal Defense Lawyers Association; Fidel Acevedo, Texas League of United Latin Americans Citizens; (*Registered, but did not testify*: Hai Bui, Greater Houston Coalition for Justice; Tiana Sanford, Montgomery County District Attorney's Office; Sarah Pahl, Texas Criminal Justice Coalition; Amanda Marzullo, Texas Defender Service; Yannis Banks, Texas NAACP)

Against — Bob Perkins

BACKGROUND: Code of Criminal Procedure, art. 19 allows jury commissioners appointed by the district judge to select prospective grand jurors from the community at large. The jury commissioners must meet certain qualifications, including that they can read and write in English, are qualified jurors, have no suit in court that requires a jury, are residents of different portions of the county, and have not served as jury commissioner within the past year.

Art. 19.23 requires, in trying the qualifications of any person to serve as a grand juror, that the person be questioned on whether the person had been convicted of or is under indictment for a felony. The person is not

required to be questioned about misdemeanor offenses.

DIGEST:

SB 135 would remove provisions requiring jury selection by jury commissioners as a method for organizing a grand jury and would remove the provisions regarding commissioner qualifications. The bill also would require a judge to direct that between 20 and 125 prospective grand jurors be selected and summoned in the same way as panels for the trial of civil cases in district courts.

The bill would require that when testing the qualifications of a grand juror, the person be asked if he or she has ever been convicted of misdemeanor theft or if the person was under indictment or legal accusation for misdemeanor theft.

The bill would require the court to select 12 individuals to serve as grand jurors and two additional individuals to serve as alternate grand jurors. The bill would allow the selection to be made only when at least 14 qualified jurors were present. In making these selections, the court would be required to consider the county's demographics related to race, ethnicity, sex, and age.

The bill would add that a person would be considered unavailable to serve on a grand jury for any reason determined by the court as constituting good cause for dismissing a juror. The bill also would repeal several sections in the Code of Criminal Appeals regarding organization of the grand jury, and part of a section of the Government Code regarding empaneling a grand jury.

This bill would take effect September 1, 2015.

**SUPPORTERS
SAY:**

SB 135 would repeal the outdated grand jury commissioner jury selection method — also known as the “key man” system — currently used in Texas and would require a random jury pool call and selection method that half of the state courts in Texas already are using. Almost every other state and the federal court system has moved from using a key man system to the random selection method. Many judges in Texas either choose juries themselves or get their jury commissioners to choose juries in the way the judge feels is best. The system in Texas should be

standardized under the random jury pool call and selection method that would be implemented by this bill.

The bill would lead to more diversity on grand juries by selecting jurors through random selection and requiring the court to consider the county's demographics related to race, ethnicity, sex, and age when selecting grand jurors and alternate grand jurors. Grand juries should be more reflective of the diverse communities they serve. Allowing jury commissioners under the key man system to select their acquaintances to serve on the jury can lead to a jury that is not representative of a county's population.

Amending the grand jury selection system would place more community confidence in grand juries. Assuring that those selected were not just acquaintances of the judge or commissioner would increase the legitimacy of grand juries in Texas. The current system allows for the grand jury to be stacked with individuals who have close ties to the legal and criminal justice system. This process is unfair and discriminatory and does not represent a broad cross-section of the community. Using the random selection method also would reduce repetitive service by the same jurors.

The bill would update the reasons to seat an alternate juror to include any other reason the court determined was good cause for excusing a juror. The previous reasons for considering a juror as unavailable to serve were only in cases of death or illness, and these conditions are much too restrictive.

**OPPONENTS
SAY:**

SB 135 actually would decrease the diversity of juries in smaller counties, which are much more likely to get a more diverse jury through the key man system than through the random selection method. Smaller counties need jury commissioners to select individuals to be on the jury to ensure its diversity. Because of the smaller population from which to choose, random selection is likely to produce a jury that is not diverse at all. Furthermore, a smaller population makes it more difficult to find enough individuals to fill a jury. Commissioners and judges should be able to select individuals in these counties.

This bill would slow the court process by requiring each jury candidate to be individually interviewed for eligibility in the random selection process.

The current key man system speeds up the process because it allows for a panel of individuals to be selected who already have an understanding of the judicial system.

NOTES: The House companion bill, HB 282 by Dutton, was placed on the General State Calendar on May 8 and postponed on May 11.

SUBJECT: Process for notice of scheduling execution date, issuing execution warrant

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Herrero, Moody, Canales, Leach, Shaheen, Simpson

0 nays

1 absent — Hunter

SENATE VOTE: On final passage, April 20 — 30-0

WITNESSES: *(On House companion bill, HB 2110)*

For — Amanda Marzullo, Texas Defender Service; *(Registered, but did not testify: Matt Simpson, ACLU of Texas; Kristin Etter, Texas Criminal Defense Lawyers Association; Douglas Smith, Texas Criminal Justice Coalition)*

Against — None

On — *(Registered, but did not testify: Edward Marshall, Office of the Attorney General)*

BACKGROUND: Code of Criminal Procedure, art. 43.141 establishes guidelines for scheduling and withdrawing execution dates for those convicted of a capital offense who have received the death penalty. Under art. 43.15, after a court enters an order setting an execution date, court clerks have 10 days to issue a warrant for the execution. The warrant is delivered to the sheriff of the county where the trial was held. The sheriff is required to deliver the warrant to the director of the Texas Department of Criminal Justice.

DIGEST: SB 1071 would prohibit convicting courts from setting execution dates unless the prosecutor in the case filed a written motion to set the date and unless at least 10 days before a court set an execution date, a copy of motion was served on:

- the attorney who represented the condemned inmate in the most recently concluded stage of a state or federal post-conviction proceeding; and
- the state office of capital writs.

At the time the warrant was issued, clerks would be required to send a copy of the warrant to the prosecutor, the office of capital writs, and attorney who represented the inmate in the most recently concluded stage of a state or federal post-conviction proceeding.

The bill would take effect September 1, 2015, and would apply only to orders entered on or after that date.

SUPPORTERS
SAY:

SB 1071 would ensure that the setting of execution dates was transparent and that all parties involved were aware of the proceedings. Given the seriousness of the state executing a person and the legal process related to an execution date, the state should implement formal procedures so that attorneys on both sides of the case were aware of the proceedings and of the setting of an execution date. Current law does not include an explicit procedure to make sure this occurs.

While some counties follow procedures similar to those in the bill, this is not the case everywhere. For example, attorneys for an inmate learned through a newspaper article that an execution date had been set two weeks earlier, leaving them 33 days before the execution. This lack of notice can create problems for a defendant because there are issues such as the competency to be executed and clemency that can depend on an execution date. A statewide policy is needed to ensure an established, fair process is used in all death penalty cases.

The bill would not create any new right to appeal or foster litigation. If parties were not notified as required, the process would begin upon notice. Requiring a defendant's most recent attorney and the office of capital writs to be notified about when a court will set an execution date and of the date itself would ensure all of an inmate's legal representatives were notified.

OPPONENTS

Instituting new steps in the process used to carry out death sentences

SAY: could invite litigation over the technicalities for carrying out the steps. For example, it is unclear what remedy would be available to defendants if the steps in SB 1071 were not followed. Problems associated with setting execution dates have been limited and might not warrant a statewide policy.

**OTHER
OPPONENTS
SAY:** It is unclear why notice of a prosecutor's motion to have an execution date set and notice of the date would be required to be served on both an inmate's attorney and the office of capital writs.

NOTES: The House sponsor plans to offer a floor amendment that would eliminate the proposed language that would have required prosecutors to file a written motion before an execution date could be set and would have created notification requirements that would have followed the motion. The amendment would require courts to provide notice to an inmate's attorney and the office of capital writs of an execution date within two days of setting that date and would state that the exclusive remedy for failing to comply with the deadline would be the resetting of an execution date. The proposed amendment also would eliminate a current requirement that execution dates set subsequent to an initial date be at least 31 days after the date the court entered the order setting the execution date. This change would prohibit all execution dates from being set earlier than the 91st day after a court enters an order setting the date.

The House companion bill, HB 2110 by S. Thompson, was sent to the House Calendars Committee on April 29.

SUBJECT: Chemical dependency treatment facilities and patient consent

COMMITTEE: Human Services — committee substitute recommended

VOTE: 9 ayes — Raymond, Rose, Keough, S. King, Klick, Naishtat, Peña, Price, Spitzer
0 nays

SENATE VOTE: On final passage, April 30 — 31-0, on local and uncontested calendar

WITNESSES: No public hearing

BACKGROUND: Health and Safety Code, ch. 462 contains provisions applying to the treatment of chemically dependent persons.

DIGEST: CSSB 1560 would make revisions concerning a patient’s consent to treatment at chemical dependency treatment facilities licensed by the Department of State Health Services (DSHS). The bill would not apply to hospitals and other facilities that are not required to be licensed by DSHS as substance abuse disorder treatment facilities.

Consent to the administration of prescription medicine given by a patient receiving treatment or by a person authorized by law to consent on behalf of the patient would be valid only if:

- consent was given voluntarily and without coercive or undue influence;
- the patient and, if appropriate, the patient’s representative were informed in writing that consent could be revoked; and
- the consent was evidenced in the patient’s clinical record by a signed form or by a statement of the treating physician or a person designated by the physician documenting that consent was given by the appropriate person and the circumstances under which consent was obtained.

A patient would have the right to refuse unnecessary or excessive

medication. A facility would not be allowed to use medication as punishment or for the convenience of staff.

The DSHS commissioner would adopt rules to require a patient's treating physician to provide information in the patient's primary language, if possible, relating to prescription medications ordered by the physician. At a minimum, the required information would have to identify the major types of prescription medications and specify for each major type:

- conditions the medications were commonly used to treat;
- beneficial effects on those conditions;
- side effects and risks associated with the medications;
- commonly used examples of medications; and
- sources of detailed information concerning a particular medication.

If the treating physician designated another person to provide the medication information, the physician would be required to meet with the patient and, if appropriate, the patient's representative within two working days. The treating physician or person designated by the physician would be required to provide the information to the patient's family on request to the extent allowed by state or federal confidentiality laws.

On request by a patient, a person designated by the patient, or the patient's legal guardian or managing conservator, if any, a facility administrator would be required to provide a list of medications prescribed while the patient was in the facility. The list would include the medication, dosage and schedule prescribed, and the name of the prescribing physician. The list would have to be provided within four hours after the facility administrator received a written request. If there was insufficient time to prepare the list before a patient's discharge, the list could be mailed within 24 hours after discharge. A patient participating in a research project could waive the right of any person to receive the medication list if release would jeopardize the project results.

The bill would repeal the definition of "assessment" in Health and Safety Code, sec. 462.025.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

**SUPPORTERS
SAY:**

CSSB 1560 would revise laws to reflect current practices on consent for medication for patients in substance abuse treatment facilities licensed by DSHS. The bill would allow a physician to designate a person to document that consent was given by the patient or appropriate person and the circumstances under which consent was obtained. Many detoxification facilities are open at all times and it would be prohibitively expensive for them to have a physician present 24 hours a day to obtain consent for medication.

The bill would standardize treatment for chemical dependency with existing statutory standards for treatment for mental health. These standards have proved workable.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

CSSB 1560 differs from the engrossed Senate version in that the House committee substitute:

- would not change the definition of a mental health professional;
- would not apply to hospitals and other facilities that are not required to be licensed as substance abuse treatment facilities by DSHS; and
- would not repeal certain provisions of Health and Safety Code, sec. 462.025 regarding intake, screening, assessment, and admission.

SUBJECT: Prioritizing public defender’s offices for appointment of counsel

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 4 ayes — Herrero, Leach, Shaheen, Simpson
0 nays
3 absent — Moody, Canales, Hunter

SENATE VOTE: On final passage, March 23 — 31-0

WITNESSES: None

BACKGROUND: Code of Criminal Procedure, Art. 26.047 provides for the creation, management and oversight of managed assigned counsel programs. It defines a managed assigned counsel program as a program operated with public funds by a governmental entity, nonprofit corporation, or bar association under a written agreement with a governmental entity, other than an individual judge or court for the purposes of appointing counsel for indigent defendants.

DIGEST: SB 316 would require courts in counties that had a public defender’s office to give priority to that office when appointing counsel for indigent defendants. Under the bill, courts would not be required to appoint the public defender’s office if the court had reason to appoint other counsel or the court appointed counsel from a managed assigned counsel program in the county.

The bill would take effect September 1, 2015, and would apply only to a criminal proceeding that commenced on or after that date.

SUPPORTERS SAY: SB 316 would encourage use of public defender’s offices across the state. Many counties have public defender’s offices that are underutilized. This bill would save taxpayers money by increasing the number of cases in which public defender’s offices, which are already funded by the counties, were appointed and reducing the amount spent on appointing private

attorneys to represent indigent defendants.

The bill would accomplish this without placing significant burdens on judges. Judges still would have discretion to appoint other counsel for any reason they thought appropriate, without having to provide justification for their decisions.

OPPONENTS
SAY:

No apparent opposition.

SUBJECT: Allowing a service fee for third-party toll collection payments.

COMMITTEE: Transportation — favorable, without amendment

VOTE: 9 ayes — Pickett, Martinez, Y. Davis, Fletcher, Israel, Minjarez, Murr, Paddie, Simmons

0 nays

4 absent — Burkett, Harless, McClendon, Phillips

SENATE VOTE: On final passage, April 30 — 30-1 (Schwertner), on local and uncontested calendar

WITNESSES: No public hearing

BACKGROUND: Transportation Code, sec. 228.052 allows the Texas Department of Transportation to enter into an agreement with one or more private entities to provide services, equipment, systems, and staff to operate a state highway toll project or system.

Sec. 228.057 establishes electronic toll collection accounts, better known as TxTag accounts, which use transponder devices placed on or inside a vehicle capable of transmitting information to assess or to collect tolls from an account maintained by the toll customer.

DIGEST: SB 1467 would allow a private entity that allowed customers to make electronic toll account payments under an agreement with the Texas Department of Transportation (TxDOT) in a location other than a TxDOT office to assess a service charge in addition to the amount paid on the account. The Texas Transportation Commission would set the maximum service charge, which could not be greater than \$3.

The bill would take effect September 1, 2015.

SUPPORTERS SAY: SB 1467 would improve customer service for toll customers across Texas who prefer to replenish their accounts in person. An outside vendor

currently operates the TxTag system for electronic toll payments. There is only one TxTag service center in the state, located in Austin, where motorists can pay bills in person or speak face-to-face with a representative. Visiting the Austin service center is inconvenient for many Texans who live far away.

By allowing third parties to assess a service fee for toll account payments, the bill would encourage third parties, such as supermarkets, to contract with the Texas Department of Transportation (TxDOT) to provide these services. In exchange for a reasonable service charge that could not exceed \$3, the bill would provide motorists with additional payment options and make driving on toll roads more convenient.

It would likely be cheaper for TxDOT to contract with third parties who had existing facilities to accommodate customers making payments than for the department to build or establish new service centers for the purpose of processing TxTag accounts.

**OPPONENTS
SAY:**

SB 1467 would allow third parties to charge fees on top of the amounts customers pay into their TxTag accounts. Toll roads create too much unnecessary bureaucracy as things stand, and this measure would expand that bureaucracy. Moreover, adding a surcharge to tolls would compound the financial burden faced by Texans who are already paying to drive on toll roads.

It is unclear that allowing third parties to process toll payments would be more cost-effective than if TxDOT simply opened more toll service centers around the state.